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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/579,918	05/19/2006	Nicolas Tombu	0540-1059	9822
466 7590 12/09/2009 YOUNG & THOMPSON 209 Madison Street Suite 500 Alexandria, VA 22314			EXAMINER NOVOSAD, JENNIFER ELEANORE	
			ART UNIT 3637	PAPER NUMBER
			NOTIFICATION DATE 12/09/2009	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DocketingDept@young-thompson.com

### Office Action Summary

**Application No.**

10/579,918

**Applicant(s)**

TOMBU, NICOLAS

**Examiner**

Jennifer E. Novosad

**Art Unit**

3637

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 June 2009 and 28 September 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 17-36 is/are pending in the application.
- 4a) Of the above claim(s) 23-28 and 34-36 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 17-21, 29-31, 33 and 3222 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This final office action is in response to (a) the amendment filed June 17, 2009 by which claims 1-16 were canceled and claims 17-36 were added, and (b) the election filed September 28, 2009.

#### ***Election/Restriction***

Applicant's election of species b, i.e., Figures 7 and 8, with claims 17-22 and 29-33 readable thereon, in the reply filed on September 28, 2009 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

*Accordingly*, claims 23-28 and 34-36 withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species there being no allowable generic or linking claim.

#### ***Claim Objections***

Claims 21 and 32 are objected to because of the following informalities:

In line 2 before "roller", --the-- should be inserted.

Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 17-19, 29, and 30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The positive recitation "supporting", as in line 5 of claims 17 and 29, renders the claims indefinite since this recitation improperly links a positive element, i.e., the curved element, to a functionally recited element, i.e., the barrel. This recitation should be functional.

The recitation "a lateral surface" in claims 17 and 29, renders the claims indefinite since this surface has not been properly set forth, and thus the structural relationship between the elements, i.e., the cross piece and curved element, is unclear.

In claim 18, it is unclear exactly what structure is being set forth, since claim 1 sets forth "a curved element" and then claim 18 attempts to further add "at least two elements". It appears that "a curved element" in claim 17 should be changed to --at least one curved element--.

Claim 19 is rendered indefinite since the structural relationship between the element and bearing points is unclear. *Further*, it is unclear which structure is being referenced by use of the term "whose", i.e., the barrel or the bearing point. These rejections are also applicable to claim 30.

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim

indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 29 recites the broad recitation a curved element (in line 5), and the claim also recites "at least two" (in line 9) which is the narrower statement of the range/limitation.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 17 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,290,074 (Syvuk et al. '074).

Syvuk et al. '074 disclose a device for supporting cylindrical objects, whereby the device comprises at least two posts (104 on right side of Figure 11), at least one cross piece (at 20 in Figure 11) forming a connection between the posts (104), a curved element (unnumbered - see Figure 11 where the curved element extends from element 20 towards element 106), whereby a curved end being connected to a lateral surface of the cross piece.

Claim 17, 18; and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,135,297 (DeShazo et al. '297).

*With respect to claims 17 and 29*, DeShazo et al. '297 disclose a device for supporting cylindrical objects (10), whereby the device comprises at least two posts (as at 58 and 32 in Figure 3, but the two posts are on the middle left in Figure 4), at least one cross piece (as at 76 in Figures 4 and 8, whereby the cross piece extends from both side of the posts) forming a connection between the posts (58, 32), a curved element (28 - see Figure 11), whereby a curved end being connected to a lateral surface (see Figure 8) of the cross piece; and *with respect to claims 18 and 29*, two elements (28) are connected in overhanging fashion to the cross piece (76) to be disposed on opposite sides thereof (see middle and left sides of Figure 4).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

*Insomuch as the claims are best understood (in view of the Section 112, 2<sup>nd</sup> paragraph rejections, advanced above)*, claims 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Syvuk et al. '074 as applied to claim 17 above, and further in view of U.S. Patent No. 6,536,612 (Flores '612).

Syvuk et al. '074 disclose the device as advanced above.

The claims differ from Syvuk et al. '074 in requiring bearing points on the curved element that are adjustable (claim 19) with the points defining a roller (claim 20).

Flores '612 teach the use of a roller (22) connected to an axle (23).

*Thus*, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the curved element of Syvuk et al. '074 with the rollers (22), as taught by Flores '612, for increased support and stability of objects placed thereon, while increasing ease in placement and removal therefrom.

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Syvuk et al. '074, alone.

Syvuk et al. '074 disclose the device as advanced above.

The claim differs from Syvuk et al. '074 in requiring the posts to be pre-stressed.

It would have been obvious to one of ordinary skill in the art at the time the invention was made (i.e., the examiner takes official notice) to have fabricated the posts from a material that is pre-stressed, to increased strength and stability.

*Inasmuch as the claims are best understood (in view of the Section 112, 2<sup>nd</sup> paragraph rejections, advanced above)*, claims 19, 20, 30, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeShazo et al. '297 as applied to claims 17, 18; and 29 above, and further in view of U.S. Patent No. 6,536,612 (Flores '612).

DeShazo et al. '297 disclose the device as advanced above.

The claims differ from DeShazo et al. '297 in requiring bearing points on the curved element that are adjustable (claims 19 and 30) with the points defining a roller (claims 20 and 31).

Flores '612 teach the use of a roller (22) connected to an axle (23).

*Thus*, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the curved element of DeShazo et al. '297 with the rollers

(22), as taught by Flores '612, for increased support and stability of objects placed thereon, while increasing ease in placement and removal therefrom.

Claims 22 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeShazo et al. '297, alone.

DeShazo et al. '297 disclose the device as advanced above.

The claim differs from DeShazo et al. '297 in requiring the posts to be pre-stressed.

It would have been obvious to one of ordinary skill in the art at the time the invention was made (i.e., the examiner takes official notice) to have fabricated the posts from a material that is pre-stressed, to increased strength and stability.

#### ***Allowable Subject Matter***

Claims 21 and 32 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection. The new grounds of rejection were necessitated by the amendment adding (at least) claims 17 and 29.

It is noted that although U.S. Patent No. 487,765 has been utilized once again to reject some of the claims, the claims rejected now are not considered to be equivalent to the claims



previously rejected, and thus although applicant's arguments have been fully considered, the arguments are not considered to be commensurate in scope to the current claims.

### *Conclusion*

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is 571-272-6832. The examiner can normally be reached on Monday-Thursday, 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. Allen Shriver can be reached on 571-272-6698. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jennifer E. Novosad/  
Primary Examiner, Art Unit 3637

December 4, 2009